

**THE RACING PENALTIES APPEAL TRIBUNAL**  
**DETERMINATION AND REASONS FOR DETERMINATION**  
**OF MR D MOSSENSON (CHAIRPERSON)**

**APPELLANT:** MATTHEW WHITE

**APPLICATION NO:** A30/08/718

**DATE OF HEARING:** 31 MARCH 2010

**DATE OF DETERMINATION:** 7 MAY 2010

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**IN THE MATTER OF** an appeal by Mr M White against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 23 February 2010 imposing a 22 day suspension for breach of Rule 163 of the Rules of Harness Racing.

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Mr M White represented himself.

Mr Sumner represented the Racing and Wagering Western Australia Stewards of Harness Racing.

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Matthew White drove at Narrogin Harness Race Club on 23 February 2010. After the race he and two other drivers were called to a Stewards' inquiry into an incident which occurred whilst racing out of the front straight on the first occasion just around the bend. In the course of answering questions Mr White acknowledged that he '*... sort of crossed him (GOLDFINCH) before he galloped*'. He went on to state that he '*...only just got in front of him so (unclear) might have been cramped for a bit of room*'. The video of the race was shown. Mr White was charged with a breach of Rule 163 of the Rules of Harness Racing. That Rule states:

(1) A driver shall not-

(a) cause or contribute to any crossing, jostling or interference'.

The Chairman of Stewards then stated:

*'... the section we are concerned about is the crossing part. The specifics being that racing out of the front straight on the first occasion you shifted down from a three wide position to a position closer to the rubber uprights tightening the racing room of Mr Goldfinch and in turn checked Mr Reeves thereby those two horses suffering interference.'*

After Mr White pleaded not guilty he was offered the explanation by the Stewards that 'crossing' occurs when a driver, in the course of changing the position of his horse, compels another runner to shorten stride or for the other driver involved to pull his horse out of its stride.

After hearing more evidence from the drivers the Stewards concluded the charge was sustained. A period of 22 days suspension of Mr White's reinsperson's licence was imposed. The length of suspension was arrived at after a three day reduction was given for Mr White's good driving record. Mr White appealed and applied for a stay. The stay was granted. The grounds of appeal state:

*'I believe I am not guilty of the charge as I don't believe there was no wrong doing on my part in the incident. The Stewards panel didn't take all the evidence into account and this would have I am sure made an impact on the result of the inquiry.'*

The basis of Mr White's submission in support of the appeal, as I understand it, is that there was movement from the other nearby horses and that he believed he had given those horses sufficient room as he came across. Mr White argued the situation developed partly due to the fact that the horses in positions one and three were both wearing blinds. Some of Mr White's propositions referred to the incident in terms of interference. By way of response, Mr Sumner confirmed he had made it clear during the course of the inquiry the charge was that of 'crossing' rather than 'interference'. However, what was not clear in the Stewards' proceedings, due to the imprecise way the charge was framed, was whether Mr White had been accused of 'causing' as distinct from 'contributing' to a crossing. As quoted above the particulars are silent as to which alternative limb in the relevant rule was being relied on. When I asked Mr Sumner to clarify this uncertainty his only explanation was that there was only one horse involved in the incident.

In the course of making his submissions before me Mr White did not raise the question of the wording of the particulars. Nor did Mr White address this aspect in his grounds of appeal. When I questioned him closely regarding this matter he accepted the fact that the ambiguity did not affect the way in which he had argued the matter before the Stewards.

Leaving aside the wording of the particulars I was entirely satisfied the evidence before the Stewards justified the finding of crossing and consequent guilt on Mr White's behalf. I am not persuaded any relevant evidence, or indeed any evidence, had not been taken into account.

In the circumstances I am not persuaded that the appellant has demonstrated that the Stewards were in error in reaching the conclusion which they did of the incident. I reach my conclusion despite the shortcomings which I have highlighted as to the way the charge was framed and particularized. Mr White was not prejudiced in defending the matter. Nothing impacted adversely on the result as a consequence. Accordingly I am satisfied that the

appeal should be dismissed, the conviction be confirmed and the suspension of the operation of the penalty should therefore immediately cease.

*Dan Mossenson*

**DAN MOSSENSON, CHAIRPERSON**

